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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/439,427**

Applicant(s)  
**Apps et al**

Examiner  
**Janet Wilkens**

Group Art Unit  
**3636**



☒ Responsive to communication(s) filed on Sep 18, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 22-38 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 22-38 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Claim Rejections - 35 USC § 103***

Claims 22, 23, 26, 29-31, 34 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pigott et al (5,197,395) in view of Wyler et al and Fingerson. Pigott teaches a plastic pallet (Fig. 1) having upper and lower decks (12) and a plurality of supports (14) therebetween. The upper and lower decks are separately molded and are attached to each other via the supports. Spaces between the supports define fork-receiving regions. For claims 22, 23, 26, 29-31, 34 and 35-37, Pigott fails to teach that the top surface of the upper deck, the bottom surface of the upper deck (in the fork-receiving regions), and the bottom surface of the lower deck are scuffed to create slip-resistant surfaces. First, Wyler teaches the benefits of having slip-resistant/anti-skid surfaces on the top surface of the upper deck (to inhibit movement of the payload disposed on the pallet; see column 1, lines 64-67), on the bottom surface of the upper deck (to prevent slippage of the pallet when it is being moved; see column 2, lines 45-47), and on the bottom surface of the lower deck (to ensure non-slip contact with a floor or racking structure; see column 2, lines 26-28). Second, Fingerson teaches the concept of roughening/scuffing a surface in order to make it into an anti-skid surface (see column 6, lines 5-8). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pallet of Pigott by roughening/scuffing the top surface of the upper deck, the bottom surface of the upper deck, and the bottom surface of the lower deck thereof, because of the advantages taught by Wyler. Furthermore, scuffing the pallet surfaces, such as is taught by Fingerson, is an easy and non-expensive way to provide anti-skid surfaces on the pallet of Pigott.

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Claims 24, 25, 27, 28, 32, 33 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pigott et al (5,197,395) in view of Wyler et al and Fingerson as applied to claims 22, 23, 26, 29-31, 34 and 35-37 above, and further in view of Sturgis. As stated above, Pigott in view of Wyler and Fingerson teaches the specifications of claims 22, 26, 31 and 36 above, including a pallet with various scuffed surfaces. For claims 24, 25, 27, 28, 32, 33 and 38, Pigott in view of Wyler and Fingerson fails to teach a means for scuffing the surfaces. Sturgis teach a cup-shaped abrading brush with wire tufts (see Fig. 1). This type of brush would be more than capable of scuffing the plastic surfaces of a pallet, as desired/needed, and therefore, it would have been obvious to use such a brush to scuff the surfaces of the pallet of Pigott in view of Wyler and Fingerson.

### ***Response to Arguments***

Applicant's arguments filed September 18, 2000 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually: one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the secondary reference of Wyler is merely being used to show the use and benefits of having slip-resistant/anti-

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skid surfaces on the top surface of an upper deck of a pallet, on the bottom surface of the upper deck, and on the bottom surface of the lower deck of the pallet.

In response to applicant's argument that there is no suggestion to combine the references: the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as stated above, it would have been obvious to modify the pallet of Pigott by roughening/scuffing the top surface of the upper deck, the bottom surface of the upper deck, and the bottom surface of the lower deck thereof, because of the advantages of such a feature on pallet surfaces, as taught by Wyler. Furthermore, scuffing the pallet surfaces, such as is taught by Fingerson, would be an easy and non-expensive way to provide anti-skid surfaces on the pallet of Pigott.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

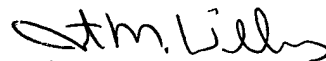
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Wilkens whose telephone number is (703) 308-2204.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Wilkens  
November 20, 2000

  
**JANET M. WILKENS**  
**PRIMARY EXAMINER**  
ATU-3636